

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4346 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAJUBHA KARNUBHA ZALA

Versus

KANDLA PORT TRUST & ANR.

Appearance:

MR YS MANKAD for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The petitioner was appointed as Khalasi in the year 1952 in the pay-scale of Rs.35 - 50. In the year 1959, the petitioner was promoted to the post of helper in the pay-scale of Rs.40 - 50. The petitioner was further promoted to the post of Nozzle Attendant in the pay scale of Rs.110 - 150 under the order of the respondent dated 28th May, 1965. The copy of the order of promotion of

the petitioner to the post of Nozzle Attendant has been produced at annexure 'A'. The petitioner was given appointment on probation for a period of two years. The petitioner was working in Kandla Port Trust's department called Vacuator section. This Vacuator section sometime acted as an agent of Food Corporation of India upto the year 1973. The petitioner and all the other persons doing work for Food Corporation of India were repatriated to parent Department in Kandla Port Trust in the year 1973.

2. The petitioner has made two fold grievances in this Special Civil Application. First, he made a grievance that he should have been posted as Fitter in the pay scale of Rs. 150 - 190. Next grievance has been made that on his repatriation, the petitioner's pay which he was drawing should have been protected. On the contrary, the petitioner has been fixed on repatriation at the pay of Rs.115/- whereas he was drawing the basic pay of Rs.150/-, which is illegal. The reply to this writ petition has been filed and the respondents have come up with a case that the post of Nozzle Attendant was not equivalent to the post of Fitter. The post of Fitter was in the scheme of skilled scales, three scales namely, Rs.150 - 190, Rs.166 - 225 and Rs.190 - 254. The post of Nozzle Attendant as per the case of the respondent was not in the scheme of skilled scales. It had only one scale of Rs. 150 -190. The appointment to the post of fitter is to be made only after the concerned person has passed the trade test. The petitioner has not passed the trade test for the post of Fitter, and as such, his grievance for the post of Fitter is not tenable.

3. During the course of arguments, learned counsel for the petitioner has given up his claim for the post of fitter and only pressed for the second submission. I find sufficient merit in the second submission. When the petitioner was repatriated back, then his pay should have been protected. The petitioner was appointed by promotion on probation to the post of Nozzle attendant. It was a regular appointment as it has come out from the order of appointment. The petitioner has for all the years from the date of appointment by promotion till the repatriation was enjoying the pay-scale of Nozzle Attendant. For any reason, if the repatriation was made then there was no justification to lower down the pay of the petitioner and that too without giving any opportunity of hearing to him. The respondents have failed to give out any explanation for reduction of the pay of the petitioner. In the reply, the respondents have given out that the petitioner on his option, has

been given the post of helper on which he had permanent/quasi permanent status. This defence is altogether illusory and cannot be accepted. The petitioner was given the promotion in the pay scale of Rs.110 -150. It was a case of regular appointment as apparent from the order wherein the petitioner was placed on probation. The petitioner is a low paid employee and in his case, the respondents could not have acted in a manner where he has been put to loss of substantial amount of his emoluments. The service conditions of the petitioner cannot be changed so as to cause prejudice to him. Apart from this, the salary of the petitioner has been reduced without giving him any notice of hearing. Taking into consideration the totality of the facts of the case, this writ petition deserves to be accepted partly. Order accordingly. This Sp. Civil Application is allowed in part. However, the claim of the petitioner for the post of Fitter is not accepted, but on his repatriation the pay of the petitioner is ordered to be protected. The respondents are directed to make necessary order for fixation of the pay of the petitioner by protecting the pay of the petitioner on his repatriation, and this order shall be made within a period of three months of receipt of certified copy of this order. The fixation of the arrears of pay, payable to the petitioner shall be determined within a period of two months thereafter and the payment thereof may be made within one month next. Rule is made absolute in the aforesaid terms with no order as to costs.
